

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DEMETRIUS JOHNSON,

Plaintiff,

v.

REYNALDO GUEVARA, the ESTATE
of ERNEST HALVERSON, DARRYL
DALEY, and GERI LYNN YANOW as
Special Representative for the Estates of
Defendants ERNEST HALVERSON,
WILLIAM ERICKSON, and JOHN
HEALY, and the CITY OF CHICAGO,

Defendants.

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) Case No. 20 CV 4156
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) Judge Sara L. Ellis
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) Magistrate Judge Heather K.
) McShain
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) **JURY TRIAL DEMANDED**
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**OPPOSED MOTION FOR ADDITIONAL TIME
TO FILE THEIR MOTION ON DISPUTES
IN THE JOINT STATEMENT OF FACTS AND SUMMARY JUDGMENT**

Defendants DARRYL DALEY, and GERI LYNN YANOW as Special Representative for ERNEST HALVERSON, deceased, WILLIAM ERICKSON, deceased, and JOHN HEALY, deceased, (“Defendant Officers”) by their undersigned counsel, respectfully move this Court for additional time to file their motion on Disputes in the Joint Statement of Facts and Summary Judgment, and state as follows:

1. On November 14, 2023, the Court extended expert discovery to December 15, 2023 set the date for Defendants to file their motions for Summary Judgment for January 31, 2024.
2. On December 22, 2023, Defendant City of Chicago and Defendant Officers submitted their separate draft JSOF to Plaintiff for review and comment.

3. Defendant Officers continued to work on their motion for Summary Judgment¹ and after not receiving any objections from Plaintiff, on January 2, 2024, informed Plaintiff that they made one edit to what was previously submitted to Plaintiff by adding one paragraph and identified the paragraph.

4. On January 9, 2024, Plaintiff for the first time requested all exhibits cited to in Defendant Officers' draft JSOF. Defendants responded the same day with a link to all exhibits and also sent an updated version with edits to Defendant Officers' citations.

5. On January 17, 2024 at 2:25 p.m., Plaintiff sent his initial objections to the Defendant Officers' draft JSOF. Plaintiff's response included red-lined edits to various facts and objections in Microsoft track changes comments in the margins of the draft JSOF. (*See* Ex. 1 - Plaintiff's 1.17.24 edits)

6. On January 19, 2024 at approximately 2:00 p.m., Defendant Officers responded to Plaintiff with responses to Plaintiff's objections and stated:

Attached please find our response to your objections you sent over on the afternoon of the 17th to the draft JSOF. We have accepted some of your edits, withdrawn some draft facts, and where there is a current dispute we have responded.

We checked and it appears that Judge Ellis is off the bench from 1/29-2/2 and she has a three day notice requirement for motions.

Therefore, in order for us to attempt to meet her deadlines, if we need to litigate any of these facts a motion would have to be filed on Monday.

Accordingly, please advise when you are available on Monday to discuss this. Additionally, in order for this draft JSOF to be in the format the court requires, please move all your stated objections and support for your objections directly below the draft fact.

(*See* Ex. 2 - Defendant Officers' 1/19/2024 Email)

¹ Defendant Officers have been mindful of where there are disputed issues of material fact and therefore, for the purposes of their motion for Summary Judgment, are **not** contesting that the "Erickson lineup report" was not produced to the prosecutor or defense counsel prior to trial.

7. On January 21, 2024 at 11:55 a.m., Plaintiff responded with an email that they would be available at 4 p.m. (after a deposition)² to discuss the JSOF. (See Ex. 3 –1/21/24 email exchange) Defendant Officers then inquired in three separate follow-up emails on January 21, 2024 inquiring: 1) If Plaintiff's counsel was going to be sending a new version with Plaintiff's objections and support in the format the court requires prior to scheduled phone call, 2) if Plaintiff's counsel was available for an earlier phone call so the parties could complete the work that needed to be done; and 3) if, due to the circumstances, Plaintiff would be willing to agree to a short extension. Plaintiff's counsel responded at 9:31 p.m. that they would not agree to any additional time, as they saw the time crunch as solely the fault of Defendants and would confer at the end of Monday. (See Ex 3)

8. On January 22, 2024 at 11:59 a.m. Plaintiff responded with additional edits, but Plaintiff once again did not provide his objections in the format required by the Court. (See Ex. 4 – Plaintiff's 1.22.24 edits to JSOF)

9. Defendant Officers then reviewed and cleaned up the working draft, including identifying the facts still in dispute and putting Plaintiff's objections and citations from the comments in the margins into the Court required format and sending the latest draft to Plaintiff's counsel just prior to a 4:30 p.m. telephone conference.

10. During the conference Plaintiff advised he would review the cleaned-up version and respond to Defendants. At the end of the phone conference, Defendant Officers confirmed with Plaintiff that they would pull all the exhibits cited in disputed fact paragraphs and remove any remaining notes in the margin so the document could be filed with the Court and the disputed paragraphs ruled upon by this Court. Additionally, Defendant Officers requested that

² This deposition was canceled by Plaintiff at 10:36 a.m. on Monday January 22, 2024.

Plaintiff correct and ensure consistency in the cites in his objections so it could be filed. (*See* Ex 5 – 1/22/24 email exchange)

11. At 6:45 p.m., Plaintiff's counsel informed Defendant Officers that he would not be able to review and send any edits until the following morning. Defendant Officers then responded (at 7:03 p.m.) that the motion needed to be filed that evening. To which Plaintiff responded (at 9:49 p.m.), with his final response on the issue again asserting that any delay was not his fault and he would respond the next day. (*See* Ex 5)

12. While Defendant Officers will continue work with Plaintiff to finalize which facts are in dispute and have those issues presented to the Court in the format the Court requires, additional time is needed to complete this.

Wherefore, Defendant Officers respectfully request this Honorable Court grant an extension of an additional seven days to file their Summary Judgment motion after the Court rules on the disputed facts and the Joint Statement of Facts is finalized.

Dated: January 22, 2024

RESPECTFULLY SUBMITTED,

/s/ Josh M. Engquist
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CERTIFICATE OF SERVICE

I certify under penalty of perjury pursuant to 28 U.S.C.A. § 1746 that a copy of the foregoing **OPPOSED MOTION FOR ADDITIONAL TIME TO FILE THEIR MOTION ON DISPUTES IN THE JOINT STATEMENT OF FACTS AND SUMMARY JUDGMENT** was filed on January 22, 2024 using the CM/ECF electronic filing system and notice thereof was sent to the below service list.

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